

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1977
No. 77-266

BETHLEHEM STEEL CORPORATION,

Petitioner,

vs.

**UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA,**

Respondent.

**DAVID MONTGOMERY TITUS, a minor, by his Guardian
ad Litem, DENISE MARIE CUTHBERT,**
Real Party in Interest.

**Response to Petition for Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit.**

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The Real Party in Interest, DAVID MONTGOMERY TITUS, a minor, by his Guardian ad Litem, DENISE MARIE CUTHBERT, respectfully prays that this Court deny issuance of a Writ of Certiorari to review the order of the United States Court of Appeals made and filed July 28, 1977.

Question Presented.

Whether the order of the District Court remanding a case to the State Court from which it had been removed is reviewable on appeal or otherwise, where

such order contains a finding by the Court that the action had been removed improvidently and without jurisdiction, pursuant to the provisions of Section 1447 (c) of Title 28, United States Code.

Statement of the Case.

On July 5, 1977, Plaintiff DAVID MONTGOMERY TITUS, through his Guardian ad Litem, moved for an order remanding his action for personal injuries to the Superior Court of the State of California for the County of Ventura. This action had been removed from State Court when defendant BETHLEHEM STEEL CORPORATION filed its petition for removal on June 27, 1977, after this case had been assigned to trial in the State Court. After a full hearing before the District Court, the Court found that the case had been improperly removed in that it was removed improvidently and without jurisdiction, pursuant to the provisions of Section 1447 (c) of Title 28, United States Code. This order was signed by the United States District Judge on July 7, 1977, after a full hearing on the wording of the order granting remand. This order was filed with the Court on that date.

Petitioner obtained a temporary stay thereafter pending action by the United States Court of Appeals for the Ninth Circuit on its petition for writ of mandamus and/or writ of prohibition. This temporary stay was vacated by the Court of Appeals on July 28, 1977. Since that time, Petitioner has sought a stay from the United States Court of Appeals for the Ninth Circuit and from this Court. Both Courts have denied the stay.

REASON RELIED ON FOR DENIAL OF WRIT OF CERTIORARI.

The Real Party in Interest relies on this Court's decision in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976). In that case, it was reaffirmed that Section 1447 (d) of Title 28, United States Code, generally forbids review of remand orders issued pursuant to Section 1447 (c), whether erroneous or not, and whether review is sought by appeal or by extraordinary writ. This has been the established rule under Section 1447 (d) and its predecessors. In the *Thermtron* case, the District Court's order of remand was based on grounds wholly different from those upon which Section 1447 (c) permits remand. This Court found that the District Court in that case exceeded its authority in remanding the case on grounds not permitted by the controlling statute. This Court held that only remand orders issued under Section 1447 (c) and invoking the grounds specified therein—that removal was improvident and without jurisdiction—are immune from review under Section 1447 (d).

The reason for Section 1447 (d) is to prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues. Congress immunized from all forms of appellate review any remand order on the grounds specified in Section 1447 (c) whether or not that order might be deemed erroneous by the appellate court.

In the instant case, the District Court, after a full hearing, ordered the case remanded to State Court pursuant to the statutory language of Section 1447 (c). Whether that decision is erroneous or not, Section

1447 (d) forbids review of that remand order. This principle was reaffirmed in the *Thermtron* case. The Real Party in Interest, therefore, requests that this Court deny the Writ of Certiorari sought by Petitioner to review the order of the Ninth Circuit in order that this case may proceed to trial in the State Court without any further interruption or delay.

Respectfully submitted,

ARCHBALD & SPRAY,

By J. WILLIAM McLAFFERTY, JR. and

GREGORY S. McDOUGALL,

Attorneys for Real Party in Interest.